

STOPPING THE BUCK

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ESTABLISHING A HEIGHTENED
STANDARD OF ACCOUNTABILITY

INTRODUCTION

By far, the most effective way for government to prevent ethical and legal abuses within its ranks is not to focus myopically on individual instances of wrongdoing as they occur, but to imbue one's workforce with an affirmative, all-permeating sense of integrity – to shine a light of excellence that dispels the shadows from which malfeasance sprouts. This article is a discussion of quotes from notable historical figures, provisions of law, and other authoritative sources establishing the theoretical basis for holding high-level officials accountable for cultures of waste, fraud, abuse, or other indiscretion within their organizations. That is to say, this standard of supervisory responsibility does not depend on whether the official knew or should have known of the bad acts of his or her subordinates, or participated in them to any degree. Instead, it is the high official's duty to actively prevent, seek out, and eradicate the harmful mentalities that can result in such negligence or misdeeds. Furthermore, because no duty truly exists without a consequence for having failed it, this article also provides a theoretical basis for holding such senior officials to account for their unwillingness or inability to prevent a harmful culture from growing within their organizations.

HISTORICAL BASIS OF HEIGHTENED ACCOUNTABILITY

A half century ago, President Harry S. Truman kept on his White House desk a famous sign that read "The Buck Stops Here." The expression, stemming from a poker term, meant that although people in government often "pass the buck" of responsibility to others, the highest executive official – in his case, the President – would accept final responsibility with vigor and aplomb.

"The Buck Stops Here" is not just a slogan, but a noble and cardinal principle of leadership. It is not merely a folksy phrase, but in fact a concept that sits at the heart of the American constitutional design, and animates the very mechanisms of our democracy. Indeed, the Founding Fathers themselves expressly intended the American executive to focus accountability on the few at the top of its hierarchy, so that the people's criticisms and agitations for change could not be dispelled fruitlessly into a generic mass of bureaucracy – so that the buck could not be passed in perpetuity.

Expanding on the theme, one might be reminded of another timeless credo, embraced by the likes of Franklin D. Roosevelt, Theodore Roosevelt, Winston Churchill, and John F. Kennedy, that "with great power comes great responsibility." The Supreme Court has echoed a similar wisdom, remarking, for instance, that "the greater power of [high-level] officials affords a greater potential for a regime of lawless conduct." The founders, understanding the importance of this concept, specifically discussed the way in which the proposed constitutional structure would bestow great power upon the Executive, while simultaneously imposing on it full accountability for actions taken on its watch. Alexander Hamilton, writing in the Federalist Papers, explained why the Constitution must create a single President and not the sort of executive council formerly used by the Crown of England and some early American states. He remarked:

But one of the weightiest objections to a plurality in the Executive . . . is that it tends to conceal faults and destroy responsibility

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. . . It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure . . . ought really to fall.

Dispersing executive responsibility among many subordinate actors, Hamilton warned, would "deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power" in that: (1) the "restraints of public opinion" would become less effective, due to the uncertainty of whom to blame; and (2) the censure or removal from office of responsible parties would be more difficult because of this same uncertainty and diffusion of accountability.

Such sentiments were not isolated to Alexander Hamilton, but formed an integral cornerstone of the proposed design and function of the American executive branch. For instance, Thomas Jefferson similarly opined, "Responsibility is a tremendous engine in a free government. Let [the Executive] feel the whole weight of it then by taking away the shelter of his Executive Council." More generally, Jefferson also wrote, "Responsibility weighs with its heaviest force on a single head," a thought mirrored with striking similarity by Hamilton, who stated, "The sole and undivided responsibility of one man will

naturally beget a livelier sense of duty and a more exact regard to reputation.” Without question, Hamilton and Jefferson were in strong agreement that accountability in government must be focused on, not eschewed from, the highest strata of executive power, where concentrated responsibility would instill in this small elite a robustness of character and obligation.

Of course, to say that the President may not retain an executive counsel to dispel blame is not to suppose that the President may not appoint and oversee executive officials possessing delegated powers. Indeed, cabinet officials have existed from the very beginnings of the republic, Thomas Jefferson and Alexander Hamilton themselves being the first Secretary of State and Secretary of the Treasury, respectively. Therefore, as a matter not only of history, but also common sense, one can logically extend the founders’ intent to impose accountability on the President to secretaries and other top-level officials in the government. In fact, as the Executive Branch and its delegated powers have grown, applying this tenet of responsibility to secretaries, assistant secretaries, and the like becomes a practical necessity in modern government. To do otherwise would render the axiom “with great power comes great responsibility” meaningless, allowing subordinates with tremendous authority to exempt themselves from the accountability standard applicable to the President.

SETTING A HIGH STANDARD

Another closely related adage, so common as to defy attribution, is “leading by example.” Echoed in countless forms throughout time and culture, this maxim calls for leaders to seize the initiative, be proactive, and set a standard of behavior by their conduct. This means a leader may not turn a blind eye to malfeasance or negligent behavior, but must affirmatively create – in both deeds and words – a culture or atmosphere of excellence and ethics that will pervade his or her organization throughout the moments and spaces of thought that specific admonitions and instructions do not touch.

As such, the upper-level official serves as a model of behavior for all below, and no such leader may idle in moral silence. As an unknown person cogently stated, “A leader leads by example, whether he intends to or not.” In this way, the mere absence of a leader’s pursuit of excellence and disdain for corruption and waste is

in fact an unwitting example for the institutional sloth that inevitably follows. High-level officials possess extraordinary powers and duties; they must not behave with ordinary ethical standards.

These cardinal principles are not merely abstractions that may be intangibly lost on the day-to-day operations of government; they find specific manifestations throughout law and executive policy. For instance, federal law requires government officials to take proactive, affirmative steps to prevent corruption and waste in the programs they oversee. In general, all federal employees have an obligation to combat “waste, fraud, abuse, and corruption” in the government. However, officials also have a duty to avoid creating even the mere appearance of a legal or ethical violation. Though generally stated, this obligation to avoid the appearance of waste, fraud, abuse, and corruption underlies management’s responsibility not just to address indiscretions when they arise, but also to employ prophylactic measures that will effectively head off problems before they materialize, thus minimizing any appearance of impropriety. In other words, when applied to a managing official, the duty to avoid the appearance of malfeasance is just another way of stating that the official must foster among his or her subordinates an observable culture of ethical, conscientious, and legal conduct.

More specific examples of this principle abound. For instance, federal ethics regulations provide that every agency head “is responsible for and shall exercise personal leadership in establishing, maintaining, and carrying out the agency’s ethics program.” This express invocation of personal leadership, rarely found in statutes and regulations, inevitably implicates the traditional leadership principles of accountability, duty, and initiative. Moreover, the President’s Office of Management and Budget (OMB) has promulgated guidelines that illustrate high-level officials’ obligation to take affirmative steps against financial waste. One OMB Circular requires agencies and managers to “take systematic and proactive measures” to create comprehensive internal control, identify necessary improvements, and continuously provide assurances that the internal control is operating effectively. This policy, like the ethics regulations above, unambiguously shows that upper-level managers have a responsibility to combat cultures of sloth and wrongfulness within their organizations that extends well beyond a simple duty to pursue specific violations as they become obvious.

RECENT EXAMPLES

The consequences of allowing an atmosphere of bureaucratic indiscretion and laziness to go unchecked are very real and often quite severe. Two fairly recent examples of collapses of internal oversight in government provide a glimpse of the corruption that can manifest in neglected organizational environments.

A procurement officer at the U.S. Air Force, Darleen A. Druyun, grossly enriched herself at the taxpayers' expense by manipulating the military contracting process. In light of the far-reaching influence she had over Air Force contracting at the time, the Pentagon was subsequently forced to review 407 contracts that she may have tainted over the course of her nine years as a procurement official, in addition to "eight other contracts worth about \$3 billion" that the Pentagon further realized may have been "sped up, interrupted or unduly influenced" by Druyun. Former bosses and other coworkers and associates painted a clear picture of the culture of unaccountability that allowed Druyun to execute her plans unchecked. For instance, "Air Force officials coined the term 'DSS: Darleen Says So' as a short response to dismiss questions about Druyun's decisions." Much of the time, she had no immediate supervisor whatsoever, and even when she did, the supervisor was often relegated to second chair, sometimes even feeling "like summer help." The Pentagon's acting acquisition chief, Mike Wynne, later admitted that "all of the leadership has to take responsibility for creating an environment that would have allowed" Druyun to corrupt the contracting process, and Senator John McCain remarked, "I don't know if she did it alone or not, but where was the oversight of the Secretary of the Air Force" and the official "who was supposed to be in charge of acquisition?"

Similarly, "lax oversight" and a culture highly forgiving of ethical violations allowed a National Institutes of Health (NIH) researcher to provide a pharmaceutical company with protected human tissue specimens in exchange for "hundreds of thousands of dollars in consulting fees," in violation of federal law and ethics rules. Even though the researcher was clearly required by federal rules to disclose all of his consulting arrangements, "his failure to file was not unusual" because many NIH doctors dismissed the disclosure rules as little more than "a bureaucratic nuisance." A U.S. House of Representatives investigation later concluded that "inadequate oversight and control

over" human tissue repositories at the NIH had allowed the researcher to engage in such "serious misconduct" undeterred.

These two scandals provide just a tiny sample of the literally countless ethical and legal abuses that can and have resulted from government's failure to inculcate its workforce with even modest standards of integrity. In both situations, the coworkers and even the supervisors surrounding the corrupt individual greatly enabled that person to manipulate or ignore rules specifically designed to prevent such malfeasance. Truly, the hallmark of nearly every past scandal – as surely will be the case in future scandals – is a workplace riddled with systemic carelessness and disregard, a house of cards just waiting to be pulled down by individuals willing to enrich themselves at the public's great expense.

CONCLUSION

Common sense, timeless wisdom, and public policy all strongly indicate that high-level officials have more than a duty not to engage in wrongful acts, or merely to react to problems when they become too glaring to ignore. If "leadership" and "responsibility" are to have any meaningful import, government must hold its senior officials to a higher standard than minimal, personal adherence to the law. Truly, because the greater the power, the greater the potential for harm, we must expect from our top decision-makers a level of accountability and quality of example that is no lesser than the extent of their authority.

Lastly, because every obligation requires consequences for having failed to meet it, one must consider the cost to an official for breaching the duty to maintain an atmosphere conducive to ethical conduct within his or her organization. Consequences might range from mere internal reprimand to full civil or criminal liability. Somewhere between these polar opposites is the option for the official to be removed from his or her position, consistent with the founder's encouragement that the executive branch utilize the power of appointment and removal of its own officers to effect a just and efficient government. Regardless of the specific action taken, if the "buck" is truly to stop, the consequence must be meaningful and significant enough to convey a clear sense to the public that the government will not countenance leadership that permits a culture of wrongdoing and waste to fester under its watch. ⚙️